

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

CRAIG CUNNINGHAM,

Plaintiff,

vs.

ENAGIC USA INC., et al.

Defendants.

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**CIVIL ACTION NO.
3:15-CV-00847**

**DEFENDANT ENAGIC USA, INC.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

Defendant Enagic USA, Inc. ("Enagic") files this Opposition to Plaintiff Craig Cunningham's ("Plaintiff") Motion for Leave to Amend his Complaint for the fourth time (the "Motion to Amend") (Doc. No. 139), stating as follows:

I. SUMMARY

The Plaintiff's Motion to Amend is intended to further delay the proceedings, and specifically to delay a ruling on Enagic's pending Motion to Dismiss Plaintiff's Third Amended Complaint for failure to state a claim. Enagic first sought to dismiss Plaintiff's Complaint in September 2015. Since that time, Plaintiff has sought additional time to respond to the Motion to Dismiss and has repeatedly amended his Complaint in an attempt to cure various deficiencies. However, neither the previous amendments nor the proposed amendment cure the deficiencies Enagic has identified in its Motion to Dismiss. It is evident that Plaintiff cannot cure the deficiencies in the Complaint and is merely seeking to delay a ruling on the Motion to Dismiss. The Court should not allow Plaintiff to further delay the proceedings.

II. DISCUSSION

Plaintiff should not be allowed to use another Motion to Amend to further delay the proceedings. Plaintiff has amended the original complaint three times and is currently seeking the Court's permission to amend the complaint for a fourth time. Plaintiff has also received multiple extensions of time to file amended pleadings or respond to pending pleadings. As the Court knows, Plaintiff initiated this lawsuit in July 2015. Plaintiff amended his complaint twice in September 2015 (Doc. Nos. 5 and 8). Enagic filed its Motion to Dismiss Plaintiff's Original Complaint and Brief in Support on September 18, 2015 (Doc. Nos. 9 and 10). Enagic then filed its Motion to Dismiss Plaintiff's Second Amended Complaint and Brief in Support on September 29, 2015 (Doc. Nos. 16 and 17). Plaintiff filed a Motion for Extension of Time to File a Response to Enagic's Motion to Dismiss on October 16, 2015 (Doc. No. 22). The Court granted Plaintiff's Motion for Extension of Time on October 19, 2015 (Doc. No. 23). In its order, the Court required Plaintiff to file a response to the Motion to Dismiss or to file a motion to amend his complaint, correcting the deficiencies identified in Enagic's motion.

On November 2, 2015, Plaintiff filed his Motion to Amend Complaint (Doc. No. 36) and his Third Amended Complaint on November 13, 2015 (Doc. No. 41). Enagic filed its Motion to Dismiss Plaintiff's Third Amended Complaint and Brief in Support on December 11, 2015 (Doc. Nos. 64 and 65). On December 30, 2015, Plaintiff filed a Motion for Extension of Time to File a Response to Enagic's Motion to Dismiss (Doc. No. 89). The Court granted Plaintiff's motion on January 4, 2016, (Doc. No. 91) and allowed Plaintiff a twenty-one (21) day extension to file his response.

On January 25, 2016, Plaintiff filed a second Motion for Extension of Time to File a Response to Enagic's Motion to Dismiss (Doc. No. 112) and also filed a Motion to Stay Enagic's Motion to Dismiss (Doc. No. 113). The Court granted Plaintiff's Motion for Extension of Time

on January 29, 2016 (Doc. No. 114), giving Plaintiff four additional days to file his response to Enagic's motion. Instead of filing a response to Enagic's Motion to Dismiss, Plaintiff filed yet another Motion for Leave to Amend the Complaint (Doc. No. 116). Plaintiff also filed a Motion to Amend on March 4, 2016, asking the Court to allow him to amend his complaint for the fourth time (Doc. No. 139). Therefore, over six months after Enagic filed its initial Motion to Dismiss and supporting brief, Plaintiff has yet to file a substantive response.

In light of the foregoing, the Motion to Amend appears to be nothing more than an attempt to further delay the proceedings and, specifically, to delay a ruling on Enagic's Motion to Dismiss Plaintiff's Third Amended Complaint for failure to state a claim. Further, the proposed amendment does not cure the deficiencies Enagic has identified in Plaintiff's amended Complaint. For these reasons, Enagic requests that the court deny the Motion to Amend.

III. CONCLUSION

Enagic USA, Inc. respectfully requests that this Court deny Plaintiff's Motion for Leave to Amend Complaint and that the Court grant such other relief to which Enagic is justly entitled.

Dated: March 21, 2016

RESPECTFULLY SUBMITTED,

/s/ J. Anne Tipps

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing pleading has been electronically filed and served on the following by electronic service through the CM/ECF system and, for those not registered to receive CM/ECF filings, by U.S. Mail on this the 21st day of March, 2016.

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